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2
3 UNITED STATES DISTRICT COURT
4 EASTERN DISTRICT OF WASHINGTON
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6 PLUMBERS UNION LOCAL NO. 12,
7 PENSION FUND, et al.,

8 Plaintiffs,

9 vs.

10 AMBASSADORS GROUP INC., et al.,

11 Defendants.
12

)
) NO. CV-09-0214-JLQ

) ORDER RE: MOTION FOR
) ATTORNEY FEES

13 BEFORE THE COURT are Plaintiff's Motion for Approval of Class Action
14 Settlement (ECF No. 169) and Plaintiff's Motion for an Award of Attorneys' Fees and
15 Expenses (ECF No. 171), both to be heard by the court on November 30, 2011.

16 The Motion for Fees and Expenses (ECF No. 171) seeks an award of 25% of the
17 settlement fund, plus expenses of \$224,211.21. See Proposed Order at ECF No. 171-1.
18 The proposed settlement fund is \$7.5 million. Therefore, an award of 25% equals
19 \$1,875,000.00. This, coupled with the requested expense award, totals approximately
20 \$2.1 million.

21 In support of this Motion, counsel indicates that they have spent approximately
22 3,000 hours on this litigation. See Dec. of J. Bull and Dec. of K. Barth at ECF No. 181
23 and 182. The law firm of Robbins Geller Rudman & Dowd LLP ("Robbins Geller")
24 seeks compensation for its services at the following rates: 1) for Partners - \$565 to
25 795/hour; 2) for Associates - \$330 to 410/hour; and 3) for Paralegals - \$265 - 295/hour.

26 The court recognizes that the Ninth Circuit has stated that, "in common fund cases,
27 the benchmark award is 25 percent of the recovery obtained, with 20-30% as the usual

1 range. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). However, the
2 Circuit also stated that the benchmark was a “starting point for analysis” and “may be
3 inappropriate in some cases.” *Id.* at 1048. When awarding fees from a common fund in
4 a class-action settlement, this court “must assume the role of fiduciary for the class
5 plaintiffs.” *Id.* at 1052. This court has an obligation to closely scrutinize the fee
6 application, and “[r]ubber stamp approval, even in the absence of objections, is
7 improper.” *Id.* A preliminary review of the hourly records in this case leaves the court
8 with the current impression that a vast number of the hours allegedly expended were
9 unnecessary to the orderly prosecution of this case. For example, a review of the hours
10 claimed shows a large number of hours expended on the relatively simple issue of a
11 protective order. Excessive billing in any singular matter causes this court to view with
12 skepticism the claimed expenditure of hours on other matters. In its fiduciary capacity
13 the court has substantial doubts as to the reasonableness of the hours claimed and the
14 charges for those hours. This concern may well cause the November 30, 2011 hearing
15 to be an extended one and may well result in additional hearings on both the attorney
16 fees and claimed expenses. Additional hearings, if necessary, will be set as the court’s
17 other matters and schedules permit.

18 The court has concerns both as to the total amount of time expended, and the
19 hourly rates. While the court is mindful that this is a securities fraud class-action and
20 that such cases can be complex, the court is also aware that this matter involved an
21 unopposed motion for class certification and did not involve summary judgment motions,
22 two factors which should have decreased the time and expense involved. The factual
23 basis for the claims in this matter was primarily that Ambassadors failed to disclose in
24 a July 24, 2007 corporate status telephone conference the loss of a marketing mailing list
25 that was its main principal source of middle school names and addresses. The fact of
26 that loss was not disputed by Ambassadors although its materiality was. The hourly
27 records of counsel for the Plaintiffs reflect that little time was required or spent on

1 discovery of that factual issue.

2 “A district court should calculate the reasonable hourly rate according to the
3 prevailing market rates in the relevant community, which typically is the community in
4 which the district court sits.” *Schwarz v. Sec. of Health & Human Serv.*, 73 F.3d 895, 906
5 (9th Cir. 1995). In setting forth the lodestar calculations as a cross-check, Robbins Geller
6 has set forth the rates of attorneys who maintain offices in California and New York, and
7 those rates substantially exceed those customarily charged in the Eastern District of
8 Washington. The Ninth Circuit has repeatedly said that “the relevant community is the
9 forum in which the district court sits.” *Camacho v. Bridgeport Financial, Inc.*, 523 F.3d
10 973, 979 (9th Cir. 2008). “Rates outside the forum may be used if local counsel was
11 unavailable, either because they are unwilling or unable to perform because they lack the
12 degree of experience, expertise, or specialization required to handle properly the case.”
13 *Id.* at 979. Robbins Geller did work with a relatively more local firm - - Hagens Berman,
14 located in Seattle, and the rates charged by Hagens Berman were considerably less.

15 Also objectionable are the \$265 to 295/hourly rates for paralegals. Recently the
16 District Court for the Northern District of California, which encompasses San Francisco
17 where Robbins Geller maintains an office, reduced requested paralegal fees from
18 \$195/hour to \$150 finding that \$150/hour is “more consistent with the market rate ... for
19 paralegal work in this district.” *White v. Coblenz, Patch and Bass, LLP*, 2011 WL
20 5183854 (N.D. Cal. Oct. 31, 2011) see also *Freeman v. Mukasey*, 2008 WL 1960838 (9th
21 Cir. 2008)(stating that prevailing market rate for paralegals in Portland, Oregon was
22 \$110/hour). In calculating the lodestar, Robbins Geller seeks a total of over \$250,000
23 in paralegal fees at these rates of \$265 to 295/hour.

24 The court is also concerned with the \$125,935.00 in expenses which is attributed
25 to “investigators.” (ECF No. 181, p. 3). The court did not find in the record a more
26 detailed explanation of these expenses, but rather just a conclusory statement that: “The
27 expenses pertaining to this case are reflected in the books and records of this firm. These

1 books and records are prepared from expense vouchers, check records, and other
2 documents and are an accurate record of the expenses.” (ECF No. 181, p. 5).

3 The court also has concerns regarding expenses and fees incurred in association
4 with the mediation. It appears that five people claimed expenses for meals, hotels, and
5 transportation to attend the mediation on April 1, 2011. (ECF No. 181, p. 4). Three
6 attorneys billed between 8 and 10 hours for attendance at the mediation. (ECF No. 181-
7 3). There is also a travel expense entry for “deliver documents to mediation” on March
8 16, 2011, but the mediation was actually April 1, 2011, and there would not normally be
9 meal or hotel expenses associated with merely delivering documents. The court
10 recognizes that travel expenses of \$17,802.53 are a small portion of the \$2.1 million in
11 fees and expenses being sought, but a review of the fees and expenses associated with
12 the mediation raise concerns of possible overstaffing and unnecessary expenses for other
13 items.

14 **IT IS HEREBY ORDERED:**

15 1. Counsel shall be prepared to address the court’s concerns, outlined *supra*, at
16 the hearing on November 30, 2011, at 10:00 a.m. Specifically, without limitation,
17 counsel shall be prepared to address:

18 a) why Robbins Geller has used its New York and California hourly billing rates
19 in calculating the lodestar, rather than rates based on the forum district;

20 b) if there is any authority supporting an award of \$295/hour for paralegal fees;

21 c) the travel and investigative expense concerns outlined above;

22 d) if it was appropriate for Robbins Geller to maintain its billing records based on
23 the quarter-hour, rather than the tenth, see for example *Zucker v. Occidental Petroleum*,
24 968 F.Supp. 1396, 1403 (C.D. Cal. 1997)(“Such a calculation-apparently harmless on
25 its face-will over the course of litigation as complex as this add up to tens of thousands
26 of dollars in unearned legal fees.”); and

27 e) if a fee and expense award exceeding \$2 million is reasonable in a matter which

1 did not involve a contested motion for class certification or the filing of summary
2 judgment motions and apparently limited discovery procedures.

3 2. If counsel wishes to make a supplemental written submission addressing any
4 of these points, such submission shall be made **no later than Wednesday, November**
5 **23, 2011, at 10:00 a.m.**

6 3. At the court hearing on November 30, 2011, the court will have numerous
7 specific questions as to the fees and expenses claimed.

8 **IT IS SO ORDERED.** The Clerk shall enter this Order and furnish copies to
9 counsel.

10 Dated this 10th day of November, 2011.

11 s/ Justin L. Quackenbush
12 JUSTIN L. QUACKENBUSH
13 SENIOR UNITED STATES DISTRICT JUDGE
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